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Dakota Prairie Grasslands  
Medora Ranger District  
May 2004

# **Equity Oil Company Federal 32-4 and 23-21 Oil and Gas Wells Project**

## **Record of Decision**



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# **Federal 32-4 and 23-21 Oil and Gas Wells Project**

## **Record of Decision**

**Dakota Prairie Grasslands  
Medora Ranger District  
Golden Valley County, North Dakota**

**U.S.D.A., NAL**

**JUL 16 2004**

**CATALOGING PREP**

**May 2004**

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<b>Cooperating Agency:</b>	Bureau of Land Management
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**Equity Oil Company  
Federal 32-4 and 23-21  
Oil and Gas Well Projects  
Record of Decision**

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# Equity Oil Company Federal 32-4 and 23-21 Oil and Gas Well Projects

## Record of Decision

### I. SUMMARY OF DECISION

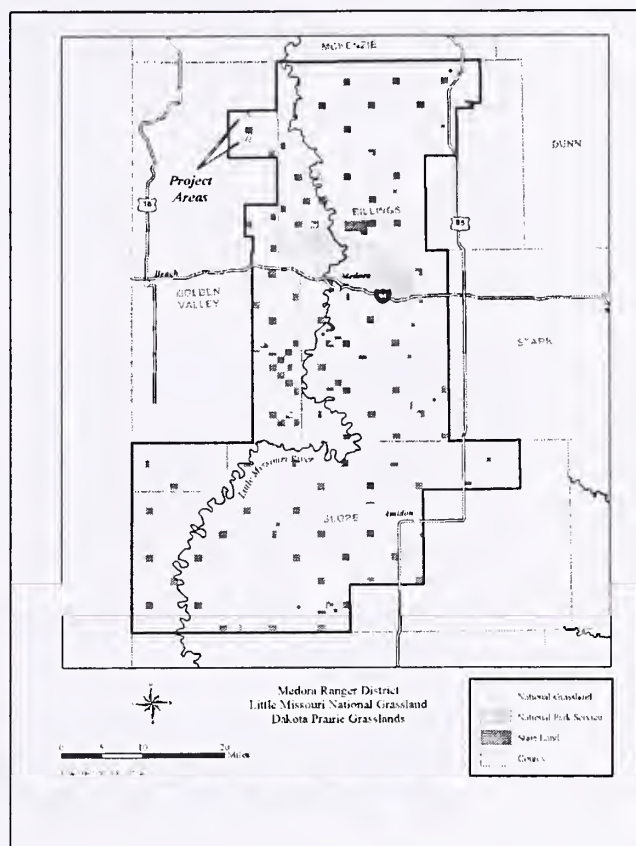
After careful consideration of the potential impacts of the alternatives analyzed and documented in the Equity Oil Company Federal 32-4 and 23-21 Oil and Gas Wells Final Environmental Impact Statement (FEIS) (issued in May 2004), I have decided to implement the management actions as described below under *Summary of Decision Actions*.

Project activities will occur within the 11,270 acre Bell Lake Inventoried Roadless Area (IRA). The two project areas associated with the proposed action are approximately 16 air miles northeast of Beach, North Dakota. The project areas are located on National Forest System (NFS) lands. Approximately 15 acres are disturbed by the proposed oil and gas wells and associated access roads.

#### *Summary of Decision Actions*

**I have decided to select and implement Alternative 1 which includes the following:**

- **Approval of the Surface Use Plan of Operations (SUPO) for the Equity Federal 32-4 and 23-21 Oil and Gas Wells.**
- **Approval of a No Surface Occupancy (NSO) stipulation waiver for Lease NDM 89514 (32-4 well).**
- **Implementation of project-specific design criteria, mitigation, and monitoring actions detailed in the FEIS on pages 2-41, 3-15, and 3-21.**



Vicinity Map

## II. PROJECT OVERVIEW

The Medora Ranger District of the Dakota Prairie Grasslands has received two Applications for Permit to Drill (APDs) from the Equity Oil Company (Equity). Equity seeks to drill two oil and gas wells, the 32-4 and 23-21, both located on National Forest System (NFS) lands. The Bureau of Land Management (BLM) approves the APD, however, the Forest Service must approve a portion of the APD, called the Surface Use Plan of Operations (SUPO), before the BLM may approve the APD. If approved, the SUPOs would authorize Equity to construct the well pads, access roads, production facilities, pipelines, and utilities. Equity has also requested a waiver of the No Surface Occupancy (NSO) stipulation for lease NDM 89514, which contains the 23-21, proposed well.

The 32-4 well site and access road are both located on National Forest System (NFS) lands in the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  of Section 4. The 23-21 well site and access road are located on NFS lands in the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 21. Both wells are located in T143N, R103W which is located in Golden Valley County, North Dakota.

These proposed wells are located on valid federal oil and gas leases, which afford an exclusive right to drill, extract and remove oil and gas resources. Because of the rights associated with a federal lease, the role of the Forest Service as identified under 36 Code of Federal Regulations (CFR) 228.107(a) is to ensure the SUPO:

- Is consistent with the lease, including the lease stipulations and applicable Federal laws.
- Is consistent with the Dakota Prairie Grasslands (DPG) Land and Resource Management Plan (LRMP).
- Meets or exceeds the surface use requirements of 36 CFR 228.108(a) thru (j). This CFR includes requirements for such things as surface resource protection, reclamation, safety measures, containment and treatment of wastes, and watershed protection.

Both of these proposed oil and gas wells are located in the Bell Lake Inventoried Roadless Area (IRA). The entire Bell Lake IRA, with the exception of approximately 320 acres of private minerals, is under federal oil and gas leases.

## III. PURPOSE AND NEED

The Dakota Prairie Grasslands (DPG) Land and Resource Management Plan (LRMP or The Plan) has identified oil and gas development as a valid use. The Plan also states that the Forest Service will honor all valid existing oil and gas leases. Therein lies the purpose for this proposed action.

Once a lease is issued and a SUPO submitted, the Forest Service is required to respond, which is the need tied to the proposed action. However, because of the rights associated with a lease the Forest Service's role is limited in scope. The Forest Service's responsibility is to determine if the submitted SUPOs are consistent with Federal mineral lease stipulations and laws; are consistent

with the DPG LRMP; and meet or exceed the surface use requirements of 36 CFR 228.108(a) thru (j).

## IV. PUBLIC INVOLVEMENT

Public involvement was conducted for this project. The key public involvement activities are listed below. Additional details can be found in the FEIS on pages 2-2 through 2-4 as well as in the project record Volume 1.

### Scoping Process

- A Notice of Intent to Prepare an Environmental Impact Statement was published in the Federal Register on December 26, 2002.
- A legal notice was published on February 4, 2003 in *The Bismarck Tribune (paper of record)* that provided information about the proposed project.
- Scoping notices, which requested comment on the proposed project, were published in the Dickinson Press on February 6, 2003; the McKenzie County Farmer on February 12, 2003; and the Billings County Pioneer on February 13, 2003.
- A scoping letter was mailed on January 31, 2003, to 64 organizations, individuals, Federal, State, and local government agencies potentially interested in or affected by the project, asking them to review and comment on the proposed project.
- The proposed project was also identified in the DPG National Environmental Policy Act (NEPA) Quarterly Schedule of Proposed Actions, First and Second Quarters, January-June, 2003 edition.
- Scoping on the proposed project closed on March 7, 2003. We received seven written comments on the proposed action during the "scoping process."

### Draft Environmental Impact Statement (DEIS)

- The DEIS was published and made available for public comment on February 20, 2004. Copies of the DEIS were provided to individuals, organizations, and agencies that provided input during the scoping process. Additional copies were sent to various organizations, state and federal agencies.
- A *Notice of Availability* was published in the *Federal Register* on February 27, 2004.
- A legal notice requesting comment on the DEIS was published on March 3, 2004 in *The Bismarck Tribune (paper of record)*.
- The public was provided 45 days to comment on the DEIS. We received 10 letters, one phone call, and two e-mails commenting on the DEIS. These comments were addressed in Appendix E of the FEIS.



### **Final Environmental Impact Statement (FEIS)**

- A Notice of Availability is scheduled to be published in the Federal Register during May 2004.
- The FEIS was published and made available to the public in May 2004. Copies of the FEIS were provided to interested people, those who commented on the DEIS, and various agencies.

## **V. ISSUES**

The planning team identified and I approved *Key Issues* for the Equity 32-4 and 23-21 Oil and Gas Wells Project through public and internal scoping (pages 2-2 through 2-3 in the FEIS and Project Record). The team determined the following to be *Key Issues*.

- Oil and gas development affects on the roadless characteristics of the Bell Lake IRA.
- Oil and gas development may provide the opportunity for noxious weeds to spread and/or infest new areas.

## **VI. ALTERNATIVES CONSIDERED IN DETAIL**

I approved the following alternatives that were analyzed by the planning team in the FEIS:

### **Alternative 1**

Alternative 1 is the Proposed Action. It was developed to respond specifically to the purpose and need for action. It focused on meeting the energy resource development direction put forth in the Plan, which among other things directs that valid existing mineral rights will be honored. It also addresses rights granted through the oil and gas leases and the Surface Use Plan of Operations (SUPOs). A SUPO identifies how the company plans to use the surface for access, drilling operations, production, and eventual reclamation. This alternative also addressed Code of Federal Regulations designed to ensure that the SUPOs meet or exceed requirements for such things as surface resource protection, reclamation, safety measures, containment and treatment of wastes, and watershed protection.

Alternative 1 proposed the construction of two well pads, which in aggregate affect approximately 6.1 acres of surface. This alternative also proposes the building of about 7,228 feet of new access roads, the installation of production facilities on the well pads, use of herbicides to control any noxious weeds that may appear and the possible future installation of buried pipelines, power and telephone lines. Refer to pages 1-5 through 1-9 in the FEIS for a detailed explanation of the specific actions associated with this alternative.

Under this alternative the No Surface Occupancy (NSO) lease stipulation waiver for lease NDM 89514, which contains the proposed 23-21 well, would be approved.

## Alternative 2 (No Action)

This alternative represented the existing condition within the project area against which the action alternative was compared. Under this alternative the Equity 32-4 and 23-21 boreholes, well pads, access roads, production facilities, pipelines, utility, and communication lines would not be constructed. It would not preclude existing ongoing activities such as livestock grazing, motorized recreational use, and continued oil exploration. Refer to page 2-41 in the FEIS for the full text of this alternative.

Table 1 below provides a comparison of how the different alternatives addressed the purpose and need for this project. Table 2 provides a comparison of the alternatives by key issue.

**Table 1. Summary of How the Alternatives Respond to the Purpose and Need**

Purpose and Need	Alternative 1 (Proposed Action)	Alternative 2 (No Action)
Consistent with the DPG LRMP direction.	Fulfills the goals, objectives, standards, and guidelines of the DPG LRMP for minerals including reclamation activities. It also allows Equity to exercise their valid existing lease rights to explore and extract oil and gas resources under federal laws.	Not consistent with the DPG LRMP direction in that Equity's existing valid oil and gas lease rights would not be honored.  The NSO stipulation waiver for lease NDM 89514 (32-4 well) would not be granted.
SUPO is consistent with the lease, including the lease stipulations and applicable Federal laws.	The proposed wells are in compliance with lease stipulations, and appropriate laws, policy, and regulations related to oil and gas development on National Forest System lands.	Not consistent with Federal law in that valid oil and gas lease rights are not honored.
Consistent with 36 CFR 228.108 (a) through (j) Surface Use Requirements.	Both SUPOs by inclusion of the 13 Point Surface Use Plan and COAs meet or exceed the requirements of 36 CFR 228.108.	No Action would preclude the need for meeting the 36 CFR 228.108 Surface Use Requirements.

**Table 2. Comparison of Alternatives by Key Issues.**

<b>Roadless Characteristics</b>	<b>Alternative 1 – Proposed Action</b>	<b>Alternative 2 – No Action</b>
Solitude and Serenity	The effects of oil production and maintenance i.e. sound, olfactory or visual will adversely affect the solitude and serenity of an area a quarter mile either side of the access road and a quarter mile around the well pad. Under the right wind conditions effects may carry beyond this area, termed a cherry stem, for short periods of time. Solitude and Serenity would be most affected in Sections 4 and 21 which contain the cherry stems.	Oil and gas activities outside but adjacent to the eastern boundary of IRA may negatively effect the Solitude and Serenity within the IRA.
Natural Appearance and Integrity	Construction of the well pads and access roads will directly impact 15 acres. Natural Appearance within the cherry stems will be modified to a degree and the area will no longer appear to be affected by the forces of nature alone, an oil and gas footprint will be evident and obvious to the casual observer. The Natural Integrity of the IRA will not be significantly affected by implementation of the proposed action. However, the opportunity to introduce or spread noxious weeds in the cherry stems does pose a possible threat to the native grasslands. Ongoing biological control of noxious weeds provides a potential positive influence on the appearance and integrity of the IRA.	Natural Appearance and Integrity are mostly intact. Existing two-track roads, fences, stock water developments, and the presence of livestock in the IRA detract from the appearance of the area. The presence of noxious weeds in the analysis area is a potential threat to the integrity of native prairie located in the IRA. Ongoing biological control provides a potential positive influence on the appearance and integrity of the IRA.
Challenge	Construction of high standard roads will provide year-round access to areas in the northern and central portions of the IRA. Within the cherry stems the opportunity to test outdoor skills and self-reliance are diminished because there is a ready means of mitigating the natural challenges present. Help or a means of access to help is close at hand in the form of accessible roads and road users. The challenge associated with the remainder of the IRA would not be significantly affected by the proposed action.	Challenge is adversely affected to a degree by the existing two-track roads, fences and stock water developments in the IRA.



Table 2. Continued

Roadless Characteristics	Alternative 1 – Proposed Action	Alternative 2 – No Action
Recreational Opportunity	The new roads will provide year-round access into the IRA for recreational activities such as hunting, sight seeing, and driving for pleasure. The Recreation Opportunity Spectrum (ROS) for the IRA would remain Semi-Primitive Motorized (SPM), however, in the cherry stems the ROS setting would move more towards a Roaded Natural setting.	The IRA would continue to provide semi-primitive motorized recreational opportunities.
Unique Characteristics	The scenic nature of the IRA as a whole would not change significantly with the introduction of the proposed wells. The IRA would retain a Scenic Integrity Level (SIL) of moderate, however, in the cherry stems it would drop a class to Low.	The scenic quality of the IRA would be maintained. It would continue to be affected by the existing two-track road system, and range improvements.
Outdoor Education	Within the cherry stems opportunities to study native plants and animals still exist but they are mitigated by the presences of the oil infrastructure. Effects to this roadless characteristic are primarily confined to sections 4 and 21.	Existing outdoor education opportunities would be maintained.
Size and Shape	The proposed action has no effect on this roadless characteristic	Same as Alternative 1
Manageable Boundaries	The proposed action has no effect on this roadless characteristic	Same As alternative 1
Noxious weeds	<p><b>Alternative 1 – Proposed Action</b></p> <p>There is opportunity to spread noxious weeds near the proposed 23-21 well site due to existing infestation in the area. There are no noxious weeds at the proposed 32-4 well site or access road.</p> <p>Potential noxious weed impacts would be mitigated through application of COA's, and design criteria.</p>	<p><b>Alternative 2 – No Action</b></p> <p>Current infestations of noxious weeds, near the Equity 23-21 well site, will continue to be treated through the Medora District's noxious weed control program. New noxious weeds populations will likely be discovered. Biological and herbicide application will reduce the existing acreage of noxious weeds but will not totally eradicate noxious weeds, notably leafy spurge. The Equity 32-4 site would likely remain noxious weed free.</p>

## VII. ALTERNATIVES NOT CONSIDERED IN DETAIL

The interdisciplinary team considered and I approved six alternatives that were subsequently dropped from detailed study. The FEIS on pages 2-37 through 2-40 provides detailed rationale for eliminating the following alternatives from further study:

- **An alternative that considered prohibiting oil and gas development in the Bell Lake IRA.**
- **An alternative that would require the operator to place the drill pads, production facilities and access roads outside the IRA boundary and drill directionally to the target formation.**
- **An alternative that would amend the oil and gas leases in the Bell Lake IRA to include a No Surface Occupancy (NSO) stipulation, which would prohibit surface occupancy in the IRA.**
- **An alternative, which would modify the Bell Lake IRA boundary to exclude the access roads and well pads.**
- **Alternative well site locations for the 32-4 well site.**
- **Alternative well site locations for the 23-21 well site.**

## VIII. DECISION

As the responsible official for this project, I have selected **Alternative 1** in the FEIS. Specific actions associated with this alternative are detailed on pages 1-5 through 1-9 of the FEIS. I have incorporated into my decision the following items from Chapters 2 and 3 of the FEIS: *Design Criteria, mitigation, and monitoring* (pages 2-41, 3-15, and 3-21). I have also decided to approve the No Surface Occupancy (NSO) stipulation waiver, requested by Equity, for Lease NDM 89514.

## XI. RATIONAL FOR THE DECISION

In selecting Alternative 1, I have determined that my decision is consistent with all laws, regulations, agency policy and the DPG LRMP. I have considered the potential cumulative effects and reasonably foreseeable activities. I believe that my decision provides the best balance of management activities to respond to the purpose and need and issues.

The criteria I used to make my decision on this project included:

- Achievement of the project's purpose and need (FEIS, page 1-5).



- Relationship to environmental and social issues, and public comments (FEIS, Chapters 2 and 3).
- Mandated Energy Laws.
- DPG LRMP direction.

### **A. Meeting the Purpose and Need**

The purpose and need for action for the Equity 32-4 and 23-21 Oil and Gas Wells are based on the Dakota Prairie Grasslands LRMP goals, objectives, standards, and Code of Federal Regulation (CFR) requirements.

The LRMP directs that valid existing mineral rights will be honored (FEIS, pages 1-2, 3). The two leases NDM 89514 and NDM 83783 associated with this project were issued in 1999 and 1995 respectively. Under these valid leases the lease holder has the exclusive right to drill for, mine, extract, remove and dispose of all oil and gas (except helium) in the lands described in their leases, together with the right to build and maintain necessary improvements thereupon (FEIS, page 1-3).

Once a lease is issued and a Surface Use Plan of Operation (SUPO) submitted, the Forest Service is required to respond. However, because of the rights associated with a lease the Forest Service's role is limited in scope. The Forest Service's responsibility is to determine if the submitted SUPOs are: consistent with Federal mineral lease stipulations and laws; consistent with the DPG LRMP; and meet or exceed the surface use requirements of 36 CFR 228.108(a) thru (j).

The SUPOs submitted for the Equity 32-4 and 23-21 wells are consistent with Federal mineral lease stipulations and laws and with the DPG LRMP direction. Through lease provisions, attached Conditions of Approval (COAs), design criteria and mitigation measures the SUPOs meet or exceed the surface use requirements of 36 CFR 228.108(a) thru (j). Selection of Alternative 1 fulfills DPG LRMP energy direction, complies with the rights granted in oil and gas leases, and fulfills CFR requirements.

Equity Oil Company has asked for a No Surface Occupancy (NSO) stipulation waiver for lease NDM 89514 which contains the 32-4 well. The lease was issued under the Draft Northern Great Plains (NGP) EIS. At that time, the lease area, was identified as Management Area (MA) 1.31 Backcountry Nonmotorized Recreation, which had a NSO stipulation for the entire MA. The NSO stipulation meant that no oil and gas facilities could be located on the surface within the MA. If development occurred, the facilities would have to be outside the MA boundaries.

The Record of Decision (ROD) for the LRMP, signed July 31, 2002 selected Modified Alternative 3 Final. Under this alternative MA 1.31 was changed to MA 6.1-Rangeland with Broad Resource Emphasis. Management Area 6.1 carries NSO stipulations for specific situations such as prohibiting occupancy in a wooded draw. There is no NSO prohibiting the occupancy of the entire surface in MA 6.1. The NSO stipulation waiver requested by the Equity Oil Company, for Lease NDM 89514 (32-4 well), is in compliance with the DPG LRMP direction for MA 6.1, therefore, I decided to approve the NSO stipulation waiver.

## **B. Consideration of the Issues**

My interdisciplinary planning team considered a variety of issues in the process of preparing the proposed action, developing alternatives to respond to those key issues, and identifying the consequences of the alternatives in the FEIS. The following section will address how I believe my selection of Alternative 1 responds to these key issues.

### Inventoried Roadless

In making my decision, I weighed the social desires to see inventoried roadless areas remain untouched against the need to fulfill the legal rights associated with an oil and gas lease. Management of inventoried roadless lands across this country is very controversial and it was no different for this project.

I heard from people who believed that we were using oil and gas development as an excuse to enter inventoried roadless areas. They also expressed desires to allow natural processes to take place in these areas. There was concern about the effect of oil and gas development on the roadless character of the IRA. There was also comment that oil and gas development was a valid use for the area.

Under both the Custer National Forest Plan and the Dakota Prairie Grasslands (DPG) Land and Resource Management Plan (LRMP), the Bell Lake area was identified as an area meeting roadless criteria. Under the Custer Plan the area was not put forth as a wilderness candidate and it was allocated to Management Areas B and E, which emphasized energy development and intensive range management. While under the Custer Plan most of Township 143 North, Range 103 West was leased for oil and gas development. Over the life of the Custer Plan oil and gas leases were exercised in the township reducing the size of the area still meeting roadless characteristics.

The ROD for the LRMP, signed July 31, 2002, also identified a portion of the township as meeting roadless characteristics. Under selected Modified Alternative 3 Final, the Bell Lake IRA was not identified as being suitable for potential wilderness, due to mineral development (NGP FEIS, Appendix C, p. C-33), and was allocated to non-wilderness prescription MA 6.1 - Rangeland with Broad Resource Emphasis (DPG LRMP Final Alternative 3 MA Map). Most of the township continues to be under oil and gas lease.

By placing the Bell Lake IRA under MA 6.1 the LRMP recognizes the roadless character of the Bell Lake IRA would be susceptible to impacts from oil and gas development as well as ongoing activities such as motorized recreation and livestock management activities. These activities may ultimately preclude the IRA from meeting roadless criteria.

The implementation of Alternative 1 will directly affect the solitude and serenity, natural appearance and integrity, challenge, recreation, and some of the scenic qualities of the IRA. While limited primarily to the sections containing the wells it is nonetheless an impact to the roadless character of the IRA. However, the Equity project is in compliance with LRMP direction and the terms of its leases. To deny this project would constitute a violation of both the LRMP and the terms of the lease.

### Noxious Weeds

There is general concern about the spread and/or infestation of new areas with noxious weeds. In this area the weed of greatest concern is leafy spurge. I share this concern about noxious weeds and carefully considered this issue. Due to existing populations of leafy spurge in the vicinity of the 23-21 well there is a good chance that spurge may appear in disturbed areas associated with the construction of the well pads and access roads. The 32-4 well site is not presently affected by noxious weeds. Because initial populations of noxious weeds would likely occur in small patches or as individual plants, the use of biological agents will be ineffective. I believe the prudent application of herbicides in accordance with label directions is the most effective way to control noxious weeds and prevent the establishment of large populations. I also believe that the COAs, design criteria, mitigation, and monitoring identified in the FEIS will be effective in stemming possible spread of leafy spurge and other noxious weeds.

### **C. Consideration of Public Comments**

During the decision process for this project, I realized that I would not be able to fully satisfy all public concerns, as some of them are mutually exclusive. Some of the major concerns that I heard and considered as I was evaluating my decision included:

#### Roadless Area Conservation Final Rule (Roadless Rule)

Most of the comments I received on the DEIS were focused on the effect of the project on the Bell Lake IRA. There was comment that the project should wait for the resolution of the Special Areas, Roadless Area Conservation Final Rule (Roadless Rule).

Under the Special Areas Roadless Area Conservation Final Rule, 66 FR 3244 (Roadless Rule), new road construction and timber harvest in inventoried roadless areas was prohibited subject to exceptions (FEIS, page 1-2). Specific exemptions allow for roads in conjunction with the continuation, extension, or renewal of a mineral lease on lands that are under lease as of January 12, 2001, 36 CFR 294.12(b)(7) and for roads pursuant to reserved or outstanding rights 36 CFR 292.12(b)(3). The leases associated with the proposed action were both issued prior to January of 2001 (FEIS, CH 1, p. 1-5). The proposed action is consistent with the Roadless Rule signed by former Secretary of the U.S. Department of Agriculture Dan Glickman on January 12, 2001.

On July 14, 2003, the Wyoming District Court granted a permanent injunction requested in State of Wyoming v. U.S. Department of Agriculture, enjoining the Forest Service from implementing all aspects of the Roadless Area Conservation Rule. The decision is currently under appeal. Settlement of the Roadless Rule controversy is impossible to predict and to forestall this decision in hope of a quick settlement does not appear to be a prudent course of action.

### Special Protection

There was also comment that the Roadless Area Review and Evaluation (RARE II) process afforded special protection to the Bell Lake IRA. RARE II was a process used to determine which inventoried roadless areas, on National Forest System lands, should be recommended to



Congress for inclusion in the National Wilderness Preservation System, which areas should be managed for nonwilderness uses, and which areas required further planning before reasonable decisions on them could be made.

A U.S. 9th circuit appellate court ruling (*California v. Block*) deemed recommendations in the RARE II EIS insufficient to meet the National Environmental Policy Act. Following this court decision, the Department of Agriculture revised its planning procedures and incorporated wilderness recommendations into its Forest and Grasslands Plans.

As previously discussed above neither the Custer National Forest Plan nor the DPG LRMP recommended the Bell Lake IRA for inclusion in the National Wilderness Preservation System. Both Plans allocated the Bell Lake IRA to non-wilderness prescriptions (FEIS, page 3-5). In both cases these prescriptions or management areas allowed for multiple resource use including oil and gas exploration and development.

#### Lease Stipulation Waiver

There was comment that Equity knew about the No Surface Occupancy (NSO) lease stipulation when they purchased the leases and therefore the waiver should not be granted. Any leaseholder can request a waiver of any lease stipulation associated with their lease. In this case, as described in the FEIS, on pages 1-5,6, the leases were issued during the Dakota Prairie Grassland LRMP revision process. At the time the leases were issued the Management Area (MA) direction for the area containing the proposed wells was MA 1.31 – Non-motorized Backcountry Recreation. Under MA 1.31 there is an entire surface NSO for oil and gas development put simply, oil and gas development could not occupy the surface area covered by the lease. Between the draft and final DPG LRMP the MA was changed to 6.1 - Rangeland With Broad Resource Emphasis - which allows the surface to be occupied for oil and gas exploration and development.

The NDM 89514 Lease carried a NSO stipulation for the entire lease for the purpose of “maintaining management options to retain a natural – appearing landscape for recreation opportunities . This refers to MA 1.31. The lease also states “a waiver may be granted if the areas are released from consideration for the above stated purpose. Any changes to this stipulation will be made in accordance with the land use plan and/or the regulatory provisions for such changes . The change to MA 6.1 from MA 1.31 released the area in the lease from the original stated purpose. If MA 1.31 had been retained in the final DPG LRMP I would not have approved the waiver. However, a change did occur which allows for surface occupancy for oil and gas exploration and development. Equity’s request is consistent with the management direction provided by the DPG LRMP. Therefore I decided to approve Equity’s request for the NSO stipulation waiver for lease NDM 89514. The NSO stipulation for woody draws (FEIS, p. 1-5) associated with NDM 89514 will be maintained.

#### Directional Drilling

Suggestions have been put forth that the wells be placed outside the IRA boundary and directionally drilled. While there is some question as to whether it is technically or economically

feasible to directionally drill from outside the boundaries, there is overriding direction concerning this issue. As noted on pages 2-38 and 2-39 of the FEIS, the Forest Service:

- Cannot require relocation of a proposed operation that requires the operations be sited off the leasehold or requires the operator to relocate operations by more than 200 meters (Department of Interior 43 Code of Federal Regulations Section 3101.1-2).
- Has no authority to require a company to move their well sites to private or state property.
- Cannot require the operator to drill a directional well when it is not required under the stipulations or terms of the oil and gas lease.

I have no authority or legal basis to require Equity to move their well locations off their leases outside the Bell Lake IRA boundaries.

#### Discretionary Review

On March 12, 2004 David P. Tenny, Deputy Under Secretary for Natural Resources and Environment, U.S. Department of Agriculture announced his decision to review the appeal decisions for the DPG LRMP. On May 5, 2004 Mr. Tenny released his decision in a letter to Dale Bosworth, Chief of the U.S. Forest Service. In the letter Mr. Tenny stated that based upon a review of the appeal records and your decisions, I am affirming your appeal decisions with instructions regarding the Nebraska Units and the Dakota Prairie National Grassland. The instructions pertained to reducing the threat of prairie dogs encroaching onto private lands, continued cooperative rangeland management efforts, and road litigation that might result in amendment of the DPG LRMP. Mr. Tenny chose to let stand the analysis and decisions regarding IRAs on the Little Missouri National Grassland. This decision is the final administrative determination of the Department of Agriculture under 36 CFR 217.

## **X. FINDINGS REQUIRED BY LAWS, REGULATIONS, AND POLICIES**

I have determined that my decision is consistent with the laws, regulations, and agency policies related to this project. The following summarizes findings required by major environmental laws:

### **National Forest Management Act (NFMA)**

The National Forest Management Act (16 USC 1600 et. seq.) and accompanying regulations require that several other specific findings be documented at the project level. These are outlined below.

#### **Resource Protection**

The following twelve statements address resource protection requirements of NFMA (26 CFR 219.27 (a)).

- Under Alternative 1 the productivity of approximately 15 acres of land will be lost through the construction of the two oil well pads and their associated access roads. The productivity will be lost for the life of the wells. The application of soil and water BMPs, identified in the watershed report, and Conditions of Approval (COAs) will assure that surrounding soil and water resources will be conserved.
- Within the scope of the project and consistent with the other resource values involved, the proposed activities will minimize risks from serious or long lasting hazards from flood, wind, wildfire, erosion, and other natural physical forces.
- This proposal does not increase nor encourage serious, long lasting hazards and damage from pest organisms.
- No streams, streambanks, shorelines, lakes, or wetlands are affected by this proposal.
- This project does not have a significant adverse effect on the diversity of plant and animal communities in the project area.
- Alternative 1 will maintain sufficient habitat for viable populations of existing native vertebrate species
- The FEIS assesses potential physical, biological, aesthetic, cultural, and engineering impacts of Alternative 1 and its consistency with multiple uses planned for the area.
- There are no known resident Threatened or Endangered (T&E) species on the Little Missouri National Grassland therefore the project would have no effect on T&E species (see Biological Evaluation in the Project File)
- There are no transportation or utility right-of-way corridors needed to accomplish the project.
- The two access roads associated with the well pads will be professionally designed and approved by certified engineers. The roads will be designed to meet appropriate safety standards, minimize transportation costs and will be located so as to minimize impacts to the surrounding lands.
- The proposed access roads are to be used during the life of the wells. Once the wells have ceased production, the well pads and access roads will be obliterated and re-contoured to match the surrounding landscape. All disturbed areas are seeded with native species mixes approved by the Forest Service.
- This project is consistent with all applicable Federal, State, and local air quality standards.



**Consistency with Grassland Plan Standards, Goals, and Objectives**

The DPG LRMP establishes management direction for the Dakota Prairie Grasslands. This management direction is achieved through the establishment of Grassland goals and objectives, standards, and guidelines, and Management Area goals and accompanying standards and guidelines. Project implementation consistent with this direction is the process in which desired conditions described by the Grasslands Plan are achieved.

The National Forest Management Act requires that all resource plans are to be consistent with the LRMP (16 USC 1604(i)). The FEIS displays the Grasslands Plan and Management Area goals and objectives and the standards and guidelines applicable to Equity Oil and Gas Wells project area (FEIS, Chapter 1). The alternative development process is detailed in the FEIS, Chapter 2. The alternatives and the environmental consequences of the alternatives in relation to the Grasslands Plan standards and guidelines are described in the FEIS, Chapter 3. After reviewing the FEIS, I find that my decision is consistent with the LRMP standards, goals, and objectives as amended.

**Clean Water Act and State Water Quality Standards**

Upon review of the Equity FEIS (Chapter 2 and Project Record ), I find that activities associated with Alternative 1 will comply with applicable provisions of the Clean Water Act and would meet water quality standards for sediment discharge.

**Clean Air Act**

Upon review of the FEIS (Chapter 2 and Project Record), I find that Alternative 1 will meet state and federal requirements for Class I and II airsheds.

**National Historic Preservation Act, American Indian Religious Freedom Act, and Native American Graves Protection and Repatriation Act**

Cultural resource reviews have been completed on all areas to be impacted by ground-disturbing activities. No cultural resources are expected to be affected by this action. Recognizing that the potential exists for unidentified sites to be encountered or disturbed during project activity, special provision for their protection will be included as part of the COAs attached to this project. This provision will allow the Forest Service to unilaterally stop all activity until the Forest Service resolves the disposition of the site. This provision will be used if a site were discovered after construction activities have begun. This project is in compliance with the Region 1 programmatic agreement (1995) with the State Historic Preservation Office and the Advisory Council on Historic Preservation.

**The Endangered Species Act (16 USC 1531 et. seq.)**

The FEIS (Chapter 2) identifies that there are no Threatened or Endangered plant or wildlife species on the Little Missouri National Grassland.

## **Roadless Area Conservation - Final Rule (Enjoined by Court Order)**

On January 12, 2001 former Secretary of the U.S. Department of Agriculture Dan Glickman signed the Special Areas, Roadless Area Conservation Final Rule (the Roadless Rule). The Roadless Rule prohibited new construction and timber harvest in inventoried roadless areas. However, several exceptions allowing new road construction were listed. One of the exceptions allows road construction in conjunction with the continuation, extension or renewal of a mineral lease issued prior to January 12, 2001. The leases associated with this project were both issued prior to January of 2001 (FEIS, Chapter 1). I find that this project is in compliance with the terms of the Roadless Rule.

On July 14, 2003, the Wyoming District Court granted a permanent injunction requested in State of Wyoming vs. U.S. Department of Agriculture, enjoining the Forest Service from implementing all aspects of the Roadless Area Conservation Rule. The decision is currently under appeal.

## **Transportation Rule and Policy (66 FR 3206 and 3219)**

The Transportation Policy requires a roads analysis process to inform road management decisions. A roads analysis process (watershed or project area scale) must be prepared prior to most road management decisions to construct or reconstruct roads throughout National Forest System lands (whether they be inventoried roadless or not) beginning on January 12, 2002. The roads analysis process itself does not make decisions. Road management decisions are made through NEPA analysis and public participation.

A roads analysis was completed for this project and placed in the Project File. Based on that analysis I find that the roads identified for this project are a necessary part of the proposal and should be added to the transportation system for the life of the wells. Recommendations from the roads analysis, identified on page 2-37 of the FEIS, are accepted and will be implemented as part of this project.

## **Migratory Bird Treaty Act**

On January 10, 2001, President Clinton signed an Executive Order outlining responsibilities of federal agencies to protect migratory birds. Upon review of the information regarding neotropical migratory birds in the project record (Chapter 2 and the Project Record), I find that Alternative 1 complies with this Executive Order.

## **Environmental Justice**

The Selected Alternative was assessed to determine whether it would disproportionately impact minority or low-income populations, in accordance with Executive Order 12898 (FEIS, page 2-34 and Project Record). No impacts to minority or low-income populations were identified during scoping or effects assessment.



## **Mineral Laws, Regulations, & Orders**

I have determined that this project is consistent with the laws, regulations, and orders governing Oil and Gas operations including but not limited to the following:

- Executive Order 13212, 2001, which recommends actions to expedite energy related projects.
- Energy Security Act of 1980, which specifies the intent of Congress that the Forest Service shall process applications for leases.
- Federal Oil and Gas Royalty Management Act of 1982, which established provisions for dealing with lease violations.
- The Code of Federal Regulations (CFR), 36 CFR 228, Subpart E, which set forth the rules and regulations by which the FS will carry out its statutory responsibilities.
- Federal Onshore Oil & Gas Leasing Reform Act of 1987, which specifies the Forest Service role in the leasing and administration of O&G leases and operations.
- Forest Service Handbook and Manual direction concerning Federal leases.
- Resource Conservation and Recovery Act of 1976, and the Comprehensive Environmental Response Compensation and Liability Act of 1980, which regulate wastes specific to oil and gas.

## **Environmentally Preferred Alternative**

It is required by regulation that one or more environmentally preferred alternatives be disclosed. The environmentally preferable alternative is not necessarily the alternative that will be implemented and it does not have to meet the underlying need of the project. It does, however, have to cause the least damage to the biological, and physical environment and best protect, preserve, and enhance historical cultural, and natural resources

Alternative 2 has been identified as the environmentally preferred alternative. This alternative would maintain the status quo causing the fewest adverse environmental effects to the Bell Lake IRA and other environmental resources. However, it would not prevent the possible spread of noxious weeds in the analysis area. Lessees would likely continue to seek to exercise their rights granted under their leases, cattle grazing would continue as well as motorized recreation.

I did not select this alternative because it did not address the purpose and need for this project, it would not fulfill DPG LRMP energy direction and it would prevent Equity from exercising the rights granted by their oil and gas leases.

Equity Oil Company has valid existing leases, issued prior to January 12, 2001, which they have decided to exercise through this project. The project is in compliance with all the terms and conditions of the mineral lease and all the goals and objectives, standards, guidelines, and Management Area goals and accompanying standards and guidelines as identified in the DPG LRMP.

## XI. APPEAL PROVISIONS AND IMPLEMENTATION

Copies of the Equity FEIS are available for review at the Medora Ranger District Office, Dickinson, North Dakota and at the Grasslands Supervisor's Office in Bismarck, North Dakota. The supporting Project Record, which includes the internal scoping, public involvement, and specialist reports, is available for review at the Medora Ranger District office.

This decision is subject to appeal pursuant to 36 CFR 215.11. A written appeal must be submitted within 45 days following the publication date of the legal notice of this decision in The Bismarck Tribune, Bismarck, North Dakota. Office hours for hand-delivered appeals are 7:30 a.m. to 4:00 p.m. It is the responsibility of the appellant to ensure their appeal is received in a timely manner. The publication date of the legal notice of the decision in the newspaper of record is the *exclusive* means for calculating the time to file an appeal. Appellants should not rely on date or timeframe information provided by any other source.

Paper appeals must be submitted to:

USDA Forest Service, Northern Region  
ATTN: Appeal Deciding Officer  
P.O. Box 7669  
Missoula, MT 59807

Or hand deliver to:

USDA Forest Service, Northern Region  
ATTN: Appeal Deciding Officer  
200 East Broadway  
Missoula, MT 59802

Faxed appeals should be sent to 406-329-3411.

Electronic appeals must be submitted to: [appeals-northern-regional-office@fs.fed.us](mailto:appeals-northern-regional-office@fs.fed.us)

In electronic appeals, the subject line should contain the name of the project being appealed. An automated response will confirm your electronic appeal has been received. Electronic appeals must be submitted in MS Word, Word Perfect, or Rich Text Format (RTF).

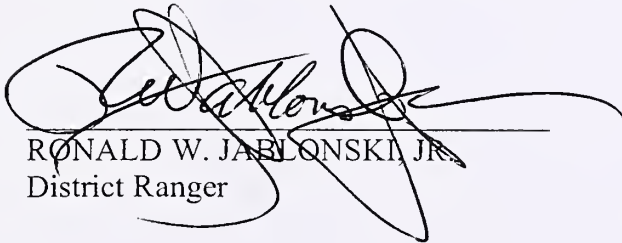
It is the appellant's responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why my decision should be reversed. The appeal must be filed with the Appeal Deciding Officer in writing. At a minimum, the appeal must meet the content requirements of 36 CFR 215.14, and include the following information:

- The appellant's name and address, with a telephone number, if available;
- A signature, or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);
- When multiple names are listed on an appeal, identification of the lead appellant and verification of the identity of the lead appellant upon request;

- The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;
- The regulation under which the appeal is being filed, when there is an option to appeal under either 36 CFR 215 or 36 CFR 251, subpart C;
- Any specific change(s) in the decision that the appellant seeks and rationale for those changes;
- Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;
- Why the appellant believes the Responsible Official's decision failed to consider the substantive comments; and
- How the appellant believes the decision specifically violates law, regulation, or policy.

If no appeal is received, implementation of the project portions may occur on, but not before, five business days following the close of the appeal filing period. If an appeal is received, implementation may occur on, but not before, the 15<sup>th</sup> business day following the date of appeal disposition.

For further information on this decision, contact Ronald W. Jablonski, Jr., District Ranger, or Jeff Adams, Project Leader, at 701-225-5151.



RONALD W. JABLONSKI, JR.  
District Ranger

5/10/04  
Date





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